



41 CFR Parts 301-10 and 301-70

[FTR Case 2022-01; Docket Number GSA-FTR-2022-0010, sequence 1]

RIN 3090-AK61

Federal Travel Regulation (FTR); Constructive Cost

AGENCY: Office of Government-wide Policy (OGP), General Services Administration

ACTION: Proposed rule.

SUMMARY: GSA proposes to amend the Federal Travel Regulation (FTR) to clarify the concept of “constructive cost” as it relates to temporary duty travel, and clarify a section regarding what mode of transportation agencies should compare privately owned vehicle costs to when preparing a cost construction. These clarifications are intended to produce better estimates for decision makers.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before **[INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** to be considered in the formation of the proposed rule.

ADDRESSES: Submit comments in response to FTR case 2022-01 to: Regulations.gov: <https://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FTR Case 2022-01”. Select the link “Comment Now” that corresponds with FTR Case 2022-01. Follow the instructions

provided at the "Comment Now" screen. Please include your name, company name (if any), and "FTR Case 2022-01" on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite FTR Case 2022-01, in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Jill Denning, Office of Government-wide Policy, at 202-208-7642 or e-mail at travelpolicy@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact The Regulatory Secretariat (M1V1CB), at 1800 F Street N.W., Washington, DC 20405, 202-501-4755 or e-mail at GSAREgSec@gsa.gov. Please cite FTR case 2022-01.

SUPPLEMENTARY INFORMATION:

I. Background

GSA is proposing to amend the FTR to clarify the concept of "constructive cost" as it relates to temporary duty travel, and clarify a section regarding what mode of

transportation agencies should compare privately owned vehicle (POV) costs to when preparing a cost construction.

When employees perform official business away from their official station, agencies must select the transportation method most advantageous to the Government, when cost and other factors are considered. Travel must be by the most expeditious means of transportation practicable and commensurate with the nature and purpose of the duties. In addition, the agency must consider energy conservation, total cost to the Government (including costs of per diem, overtime, lost work time, and actual transportation cost), total distance traveled, number of points visited, and number of travelers. The most advantageous transportation mode by order of precedence is common carrier, Government-furnished automobile, and rental car. An agency may authorize the use of a POV only after the agency evaluates the advantage of using the other modes of transportation.

Federal employees may choose to use a POV while on temporary duty (TDY) travel regardless of the mode of transportation the agency directs in the travel authorization. However, if the agency has directed the employee to use a mode of transportation other than POV because it is more advantageous to the Government, the agency must perform a cost comparison, known as a constructive cost exercise, to determine how much the agency should reimburse the traveler when they choose a POV

over the agency-selected mode of transportation. If the mode of transportation the agency has authorized is less than the cost of traveling by POV, the employee only receives that limited amount, regardless of how much it costs to use a POV. If the constructive cost shows that the POV cost is less than the agency-selected mode, then the employee will receive the total POV-related costs.

(Agencies are reminded that the FTR does not authorize agencies to require that employees use their POV for TDY travel, even if the costs will be less for the Government.)

GSA is aware that agencies often mistakenly calculate TDY constructive costs by only comparing the selected transportation mode with the POV mileage rates without also factoring in related travel costs, such as per diem expenses, parking, baggage fees, etc. Not factoring in these other costs leads to an incomplete calculation of the total "constructive" travel cost that employees may incur.

The Civilian Board of Contract Appeals (CBCA) and its predecessor board, the General Services Board of Contract Appeals (GSCBA) have, in their holdings on TDY constructive costs, opined that when comparing the total allowable costs for travel by a mode other than that most advantageous to the Government, with the constructive cost of traveling by the authorized mode, agencies should think through the complete travel experience and include other potential costs. (See *In Re Yates*, GSCBA No. 15109-TRAV (Jan. 28,

2000); *In the Matter of Stephen M. England*, CBCA 3903-TRAV (Jan. 30, 2015)). For example, if an employee was authorized to travel by air via common carrier but chose to travel by POV, in calculating the constructive cost of air travel the agency should include potential costs such as the expected cost of lodging as well as meals, incidentals, airfare, baggage, use of a rental car, and transportation to and from the airport using a taxi or transportation network company (TNC), and perhaps others depending on the individual's situation. Even though these costs may not actually be incurred when the employee uses their POV instead of flying via a common carrier, they should be included in the agency's constructive cost analysis to determine how much the authorized mode would have cost the agency in total.

GSA anticipates there may be negligible cost savings because of this change in the regulation. The preferred methods of travel are not changing, and agencies will still be required to select the method of travel that provides the best value to the government. By better understanding how constructive costs are calculated, agencies should be less likely to authorize any higher-cost POV travel (except in rare instances when all preferred methods are not available or practicable). Agencies will likely spend less administrative time defending cost construction

calculations that may have been unclear or confusing to the traveler.

Additionally, GSA proposes to clarify the constructive cost methodology stated in §301-10.309. GSA amended this section in 2015 to include the use of rental cars as a potential transportation option that agencies could authorize on TDY in addition to the use of common carriers (80 FR 27259). However, when determining the constructive cost, the section currently states that agencies should not exceed the total constructive cost of the "authorized method of common carrier transportation," when it should read "authorized method of transportation" as is consistent with 41 CFR 301-70.105(a). Agencies are directed to limit reimbursement to the authorized method of transportation (to include rental cars), rather than to the authorized method of common carrier (excludes rental cars). It is clear in the background section of the 2015 amendment that is what GSA intended, but at that time the FTR was not accurately amended to reflect the agency's intent.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives, and if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is not expected to be a significant regulatory action, and therefore, is not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

III. Congressional Review Act

OIRA has determined that this proposed rule is not a "major rule" as defined by 5 U.S.C. 804(2). Additionally, this proposed rule is excepted from Congressional Review Act reporting requirements prescribed under 5 U.S.C. 801 since it relates to agency management or personnel under 5 U.S.C. 804(3).

IV. Regulatory Flexibility Act

GSA does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the changes are administrative in nature and only affect Government employees. Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

V. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the Federal Travel Regulation do not impose recordkeeping or information collection requirements, or

the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects

41 CFR Parts 301-10 and 301-70

Government employees, Travel and transportation expenses.

Krystal J. Brumfield,
Associate Administrator,
Office of Governmentwide Policy.

For the reasons set forth in the preamble GSA proposes to amend 41 CFR parts 301-10 and 301-70 as set forth below:

PART 301-10-TRANSPORTATION EXPENSES

1. The authority citation for 41 CFR part 301-10 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118; Office of Management and Budget Circular No. A-126, "Improving the Management and Use of Government Aircraft." Revised May 22, 1992.

2. Revise § 301-10.309 to read as follows:

§301-10.309 What will I be reimbursed if I am authorized to use common carrier transportation or a rental vehicle and I use a POV instead?

You will be reimbursed the applicable POV rate on a mileage basis, plus per diem and related travel expenses, not to exceed the total constructive cost of the authorized method of transportation. Your agency must determine the constructive cost in accordance with §301-70.105(a).

PART 301-70-INTERNAL POLICY AND PROCEDURE REQUIREMENTS

3. The authority citation for 41 CFR part 301-70 is revised to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec. 2, Pub. L. 105-264, 112 Stat. 2350 (5 U.S.C. 5701, note); OMB Circular No. A-126, revised May 22, 1992; OMB Circular A-123, Appendix B, revised August 27, 2019.

4. Amend §301-70.105 by revising paragraph (a) to read as follows:

§301-70.105 May we prohibit an employee from using a POV on official travel?

* * * * *

(a) Limit reimbursement to the constructive cost of the authorized method of transportation, which is the sum of travel and transportation expenses the employee would reasonably have incurred had the employee traveled by the method of transportation deemed to be most advantageous to the Government. The calculation will necessarily involve assumptions. Examples of related expenses that could be considered constructive costs include, but are not limited to, taxi and TNC fares, baggage fees, rental car costs, tolls, ferry fees, and parking charges; and

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5. Amend §301-70.506 by revising paragraph (b) to read as follows:

§301-70.506 How do we define actual cost and constructive cost when an employee interrupts a travel assignment because of an incapacitating illness or injury?

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(b) Constructive cost is the sum of travel and transportation expenses the employee would reasonably

have incurred for round-trip travel between the official station and the alternate location plus per diem calculated for the appropriate en route travel time. The calculation will necessarily involve assumptions. Examples of related expenses that could be considered constructive costs include, but are not limited to, taxi and TNC fares, baggage fees, rental car costs, tolls, ferry fees, and parking charges.

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